

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis Luciani Jr., et. al.	§	Confirmation No.:	3179
		§		
Serial No.:	10/729,676	§	Group Art Unit:	2151
		§		
Filed:	12/05/2003	§	Examiner:	John Walsh
		§		
For:	System for Establishing	§	Docket No.:	200314489-1
	Hardware-Based Remote	§		
	Console Sessions and	§		
	Software-Based Remote	§		
	Console Sessions	§		

APPEAL BRIEF

Mail Stop Appeal Brief – Patents

Date: May 21, 2009

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby reinstate their appeal by submitting this Appeal Brief in connection with the above-identified application. A Notice of Appeal is being electronically filed concurrently herewith.

Pursuant to MPEP § 1204.01, because the Board did not make a decision on the previous appeal, Appellants are not required to file any additional appeal fees. However, if Appellants have overlooked any fees that must be paid to continue the appeals process or to avoid abandonment, Appellants hereby authorize such charges to be made to Conley Rose, P.C. Deposit Account No. 03-2769.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas. HPDC is a wholly owned affiliate of Hewlett-Packard Company (HPC). The Assignment from the inventors to HPDC was recorded on December 5, 2003, at Reel/Frame 014787/0060.

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II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Originally filed claims: 1-20.
Claim cancellations: 9-10.
Added claims: None.
Presently pending claims: 1-8 and 11-20.
Presently appealed claims: 1-8 and 11-20.

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IV. STATUS OF THE AMENDMENTS

Appellants have not filed any amendments since the most recent Office Action issued on January 26, 2009.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' contribution generally is directed to methods and systems that are operable to selectively establish hardware-based remote console sessions and software-based remote console sessions (as opposed to systems that are able to establish just hardware-based remote console sessions but not software-based remote console sessions or just software-based remote console sessions but not hardware-based remote console sessions). See, e.g., p. 9, ll. 16-21.

Claim 1 is directed to a system (100) that comprises a CPU (106); memory (118) coupled to the CPU, the memory storing programs (108, 110, 112, 128) executable by the CPU; and a system management processor (102) coupled to the CPU. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions. See, e.g., p. 9, ll. 16-21. See also p. 4, l. 19 – p. 6, l. 9.

Dependent claim 7 is directed to the system of claim 1. Claim 7 requires that when operating a hardware remote console the system management processor tracks changes in a video memory (124), analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations. Fig. 1; p. 4, l. 28 – p. 5, l. 3.

Claim 8 is directed to a system that comprises a host computer (100). Fig. 1. The host computer includes a CPU (106); memory (118) coupled to the CPU; and a system management processor (102) coupled to the CPU and memory. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The system also comprises a remote computer (122) coupled to the system management processor by way of a communication network. *Id.* The remote computer accesses the host computer by way of the system management processor to initiate a remote console session. P. 4, ll. 16-18. The system management processor selectively switches between a software-based remote console session and a hardware-based remote console session. See, e.g., p. 9, ll. 16-21. The remote computer further comprises a software-based remote console applet program (114) and a hardware-based remote console applet program (116). Fig. 1; p. 8, ll. 14-21. The

software-based remote console applet program supports the software-based remote console sessions and the hardware-based remote console applet program supports the hardware-based remote console sessions. *Id.* The hardware-based remote console applet program controls the software-based remote console applet program. P. 8, ll. 28-30.

Claim 15 is directed to a computer system (100) that comprises means for executing programs (106; Fig. 1; p. 3, ll. 26-27); means for storing programs for execution (118; Fig. 1; p. 3, l. 27) coupled to the means for executing; and means for providing remote console (102; Fig. 1; p. 3, l. 30) to the computer system coupled to the means for executing. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The means for providing selectively establishes hardware-based remote console sessions and software-based remote console sessions. See, *e.g.*, p. 9, ll. 16-21. See *also* p. 4, l. 19 – p. 6, l. 9.

Dependent claim 20 is directed to the computer system of claim 15. Claim 20 requires that, when operating a hardware remote console, the means for providing tracks changes in a video memory (124; Fig. 1; p. 4, l. 30), analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations. Fig. 1; p. 4, l. 28 – p. 5, l. 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL¹

Whether claims 1-8 and 11-20 are anticipated under 35 U.S.C. § 102(b) by *Integrated Lights Out Technology: Enhancing the Manageability of Proliant Servers* (hereinafter "Publication").

¹ The Examiner made a provisional, obviousness-type double-patenting rejection against claims 1-5, 8, 11 and 13-19, as briefly addressed in Section VII(C) of this Brief. This issue is not being reviewed on appeal.

VII. ARGUMENT

A. Summary of Publication

Publication teaches Integrated Lights Out (iLO), which comprises technology resident on a host server and which a remote user can use to remotely manage the server. Abstract. iLO is composed of hardware or firmware that monitors the host server. P. 3, para. 4. iLO enables a remote user to view the host server's console. Abstract. iLO resides in the host server and manages the server through any state: initial power-on testing, prior to OS-loading, during OS use, and during or after OS failure. Abstract.

Publication does not teach both hardware and software remote console sessions, and Publication most certainly does not teach or even suggest the capability to selectively switch between hardware and software remote console sessions, as required by the claims.

B. Rejections under 35 U.S.C. § 102(b)

1. Claims 1-6 and 15-19

Claims 1-6 and 15-19 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 1 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

a) Explanation of claim 1

Claim 1 requires "wherein [a] system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions." Publication fails to teach or even suggest such a limitation. Publication discloses hardware-based remote consoles. A disadvantage to hardware-based remote consoles is performance quality. The system described in claim 1 alleviates this problem because the system is able to selectively "establish hardware-based remote console sessions and software-based remote console sessions." Thus, unlike Publication, which teaches only hardware remote console sessions and fails to teach software remote console

sessions, claim 1 teaches selectively switching between hardware and software remote console sessions.

When a system is recited as being operable to selectively establish a hardware-based remote console session AND a software-based remote console session, as is the system in claim 1, then the system is able to selectively establish either one of the sessions. In other words, what is being claimed is the system's innate capability to selectively switch between the sessions. A system like that in Publication which is able to select only one of the sessions (*i.e.*, a hardware session) does not have this dual capability that Appellants are claiming. Claim 1 does not use the word "or" when reciting hardware- and software-based remote console sessions; it uses the word "and." This word very clearly implies that the system can establish both types of sessions, and that the system can selectively establish one of these sessions at a time.

The foregoing explanation does not narrow claim scope in any way.

b) Appellants' rebuttal to the Office Action dated January 26, 2009

In the Office Action dated January 26, 2009, the Examiner argues that Publication does in fact teach the selective establishment of hardware-based remote console sessions and software-based remote console sessions. Specifically, the Examiner points to the last paragraph of page 4 as teaching the claimed "selective" requirement. The Examiner further points to pages 4 and 6 (Publication's teaching of graphical remote consoles as part of the Lights-Out Advanced version) as satisfying the claimed "software-based remote console session" requirement. As Appellants now explain, the Examiner errs in making each of these assertions.

First, Appellants respectfully submit to the Board that the last paragraph of page 4 is wholly irrelevant to any "selectivity" at all, and it certainly does not teach selectivity between hardware- and software-based remote console sessions. Instead, this paragraph merely teaches that customers can upgrade their version of Integrated Lights-Out technology to an Advanced version using a license key. This paragraph also teaches that the upgrade may be done using a web browser.

The paragraph further teaches that the advanced features of the Advanced Pack are available immediately, meaning that no reboot of the hardware is required. Clearly, this paragraph has to do with upgrading purchased software, not with the technical capabilities of the software itself, and certainly not with “selectivity” in any context.

Second, the graphical remote console ability to which the Examiner refers (on pages 4 and 6 of Publication) do not actually constitute software remote console sessions, as the Examiner contends. In fact, Publication itself plainly admits that graphical remote consoles are hardware-based: “[t]he Integrated Lights-Out Advanced features include the powerful capabilities of a **hardware-based Graphical Remote Console . . .**” (emphasis added). P. 4, first paragraph after the bulleted list. This admission in and of itself renders the Examiner’s argument moot. Regardless, even if Publication did not so admit, the fact remains that Publication appears to teach no software-based remote console session and hardware-based remote console session between which a user may selectively switch.

For at least these reasons, the Examiner erred in rejecting claim 1. Thus, Appellants respectfully ask the Board to reverse the Examiner’s rejection of all claims in claim 1’s group and set the claims for issue.

2. Claims 7 and 20

Claims 7 and 20 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 7 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Claim 7 is dependent on independent claim 1 and thus is patentable for at least the same reasons that claim 1 is patentable.

In addition, claim 7 requires “wherein when operating a hardware remote console the system management processor tracks **changes** in a video memory,

analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations” (emphasis added). The Examiner asserts that Publication discloses this limitation in the last paragraph of p. 5. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication does teach “monitoring the PCI bus for video activity,” but it does not teach “track[ing] changes in a video memory.” Monitoring a bus is not the same as monitoring memory and, further, monitoring for video activity is not the same as monitoring for actual changes. Claim 7 is further patentable over Publication for these reasons.

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed and the claims set for issue.

3. Claims 8 and 11-14

Claims 8 and 11-14 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 8 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Independent claim 8 requires “wherein the system management processor selectively switches between a software-based remote console session and a hardware-based remote console session.” The Examiner asserts that Publication teaches this limitation on pages 4 and 6, just as the Examiner did with respect to claim 1. However, as Appellants have already established with respect to claim 1 above, Publication fails to teach or suggest the limitation in question. The Examiner erred in rejecting claim 8 for at least this reason.

The Examiner erred in rejecting claim 8 for a second reason. Specifically, claim 8 requires “wherein the remote computer further comprises a software-based remote console applet program and a hardware-based remote console applet program, the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions.”

On pp. 4-5 of the Office Action, the Examiner asserts that Publication discloses this limitation on p. 9, paragraph 3. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication merely discloses a Virtual Media applet that provides data to the Integrated Lights-Out as requested. There appears to be no mention of the Virtual Media applet being used to support a software-based remote console or even a hardware-based remote console. Thus, not only does Publication fail to disclose software-based remote consoles as explained above, but Publication certainly fails to disclose a software-based remote console applet supporting software-based remote console sessions and a hardware-based remote console applet supporting hardware-based remote console sessions. The Examiner erred in rejecting claim 8 for at least this additional reason.

The Examiner erred in rejecting claim 8 for a third reason. Claim 8 requires “wherein the hardware-based remote console applet program controls the software-based remote console applet program.” On page 5 of the Office Action, the Examiner asserts that Publication teaches this limitation on p. 11, paragraph 2. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication only describes a firewall that protects the integrity of firmware. A firewall that protects the integrity of firmware is not the same as a hardware-based remote console applet program that controls a software-based remote console applet program, where the applets control hardware-based remote console sessions and software-based remote console sessions, respectively (as required by claim 8). Claim 8 is patentable for this additional reason.

Of the three arguments presented above, Appellants have offered the latter two on multiple occasions. To date, the Examiner has failed to reply to these arguments. In the Final Office Action dated March 19, 2009, the Examiner offered an exceptionally succinct rebuttal by stating that “the claims have been given the broadest reasonable interpretation and the prior art reference anticipates the claims.” No other explanation was given. In the Office Action dated January 26, 2009, the Examiner made no mention of these two arguments

at all. Appellants can only assume that the Examiner did not rebut the Appellants' arguments because the Examiner finds Appellants' arguments to be valid. Absent any argument from the Examiner, Appellants very respectfully ask the Board to reverse rejections against this grouping of claims and to set these claims for issue.

C. Provisional, Obviousness-Type Double Patenting Rejection

Claims 1-5, 8, 11 and 13-19 stand provisionally rejected as unpatentable over claims 7-12 of co-pending Application No. 10/728,465. Because this is a provisional rejection and neither the instant patent application nor the '465 patent application has been patented, Appellants choose not to address the provisional rejection at this time.

D. Conclusion

For at least the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/Nick P. Patel/

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VIII. CLAIMS APPENDIX

1. (Original) A system comprising:
a CPU;
a memory coupled to the CPU, the memory storing programs executable by the CPU; and
a system management processor coupled to the CPU, wherein the system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions.
2. (Original) The system of claim 1, wherein the programs executable by the CPU support software-based remote console sessions.
3. (Original) The system of claim 2, wherein the programs executable by the CPU enable data transfer between the system and the system management processor.
4. (Original) The system of claim 1, wherein the system management processor comprises an application-specific integrated circuit.
5. (Original) The system of claim 4, wherein the system management processor supports hardware-based remote console sessions and software-based remote console sessions.
6. (Original) The system of claim 1, wherein the system management processor is powered independently from the system.
7. (Original) The system of claim 1, wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations.

8. (Previously presented) A system comprising:
- a host computer comprising:
 - a CPU;
 - a memory coupled to the CPU; and
 - a system management processor coupled to the CPU and memory;
 - a remote computer coupled to the system management processor by way of a communication network;
- wherein the remote computer accesses the host computer by way of the system management processor to initiate a remote console session;
- wherein the system management processor selectively switches between a software-based remote console session and a hardware-based remote console session;
- wherein the remote computer further comprises a software-based remote console applet program and a hardware-based remote console applet program, the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions; and
- wherein the hardware-based remote console applet program controls the software-based remote console applet program.

9.-10. (Canceled).

11. (Previously presented) The system of claim 8, wherein the system management processor controls the hardware-based remote console applet program and the software-based remote console applet program.

12. (Original) The system of claim 8, wherein the system management processor is powered separately from the system.

13. (Original) The system of claim 8, wherein the memory comprises programs executable by the CPU, the programs supporting software-based remote console sessions.

14. (Original) The system of claim 13, wherein the programs enable communications between the CPU and the system management processor.

15. (Original) A computer system, comprising:
a means for executing programs;
a means for storing programs for execution coupled to the means for executing; and
a means for providing remote console to the computer system coupled to the means for executing;
wherein the means for providing selectively establishes hardware-based remote console sessions and software-based remote console sessions.

16. (Original) The computer system of claim 15, wherein the means for storing further comprises programs for execution that support software-based remote console sessions.

17. (Original) The computer system of claim 16, wherein the programs for execution facilitate communications between the computer system and the means for providing.

18. (Original) The computer system of claim 15, wherein the means for providing comprises:
an application-specific integrated circuit, the application-specific integrated circuit comprising a microcontroller; and
a memory coupled to the application-specific integrated circuit.

19. (Original) The computer system of claim 18, wherein the memory is used for communication between the means for providing and the computer system.

20. (Previously presented) The computer system of claim 15, wherein when operating a hardware remote console the means for providing tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.